

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**UNITED STATES OF AMERICA,**

**Appellee,**

**v.**

**Appeal No. 16-4254**

**RAYMOND ROE,**

**Appellant.**

**MOTION TO EXTEND TIME  
TO FILE APPELLANT'S BRIEF AND JOINT APPENDIX**

Comes now the Appellant, Raymond Roe (“Roe”), by his counsel Research & Writing Specialist Jonathan D. Byrne and Assistant Federal Public Defender Rhett H. Johnson, pursuant to Rule 31(c) of the Local Rules of the Fourth Circuit, and respectfully moves this Court to grant a one-month extension of the due date for his brief and joint appendix, making them due on or before July 28, 2016. In support of this motion, undersigned counsel represents:

1. Pursuant to the briefing order of this Court filed on May 24, 2016, the brief and joint appendix of Roe are due on June 28, 2016.
2. On June 26, 2015, the Supreme Court decided *Johnson v. United States*, 135 S. Ct. 2251 (2015), when held that the residual clause of the Armed Career Criminal Act

is unconstitutional. In *Welch v. United States*, 136 S.Ct. 1257 (2016), the Supreme Court held that *Johnson* was retroactive to otherwise final cases. Motions under 28 U.S.C. § 2255 to correct or vacate sentences under *Johnson* are due before June 26, 2016.

3. On June 8, 2016, this Court decided *In re Hubbard*, Appeal No. 15-276, in which it held that *Johnson* applies to those designated as career offenders by the Sentencing Guidelines and that those inmates may likewise seek relief under § 2255. Those motions also need to be file before June 26, 2016.

4. Counsel Byrne is primarily responsible in the Office of the Public Defender for reviewing and processing cases seeking relief under *Johnson*. At present, that includes approximately 12 cases under the Armed Career Criminal Act and 44 cases under the career offender provision of the Sentencing Guidelines. All those cases require action between now and June 26, 2016.

5. AFD Johnson is also involved in the review and processing of career offender cases under *Johnson*.

6. Roe's case involves, to undersigned counsel's knowledge, an issue of first impression before this Court that will require extensive research and analysis.

7. In light of undersigned counsels' obligations at present, they feel they will be unable to adequately complete the review of Roe's case and the necessary research on issues in order to prepare the brief and joint appendix for filing on or before June

28, 2016.

8. Joseph F. Adams, the Assistant United States Attorney assigned to represent the Appellee in this case, has authorized undersigned counsel to state that he does not object to the relief requested in this motion.

WHEREFORE, Appellant requests a one-month extension of time in which to file the opening brief and joint appendix in this appeal, making them due on July 28, 2016.

Date: June 8, 2016.

Respectfully submitted,

**RAYMOND ROE**

By Counsel

**CHRISTIAN M. CAPECE**  
**FEDERAL PUBLIC DEFENDER**

s/Jonathan D. Byrne  
Jonathan D. Byrne  
Research & Writing Specialist  
Office of the Federal Public Defender  
300 Virginia Street, East, Room 3400  
Charleston, West Virginia 25301  
E-mail: [jonathan\\_byrne@fd.org](mailto:jonathan_byrne@fd.org)

s/Rhett H. Johnson  
Rhett H. Johnson  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
300 Virginia Street East, Room 3400  
Charleston, West Virginia 25301  
E-mail: [rhett\\_johnson@fd.org](mailto:rhett_johnson@fd.org)

**CERTIFICATE OF SERVICE**

I do hereby certify that on **June 8, 2016**, the foregoing **MOTION TO EXTEND TIME TO FILE APPELLANT'S BRIEF AND JOINT APPENDIX** was electronically filed with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

**VIA CM/ECF:**

Joseph F. Adams, AUSA  
Office of the United States Attorney  
845 5<sup>th</sup> Avenue, Room 209  
Huntington, West Virginia 25701  
Email: [joe.adams@usdoj.gov](mailto:joe.adams@usdoj.gov)

By: s/Jonathan D. Byrne  
Jonathan D. Byrne  
Appellate Counsel  
Office of the Federal Public Defender  
300 Virginia Street, East, Room 3400  
Charleston, West Virginia 25301  
E-mail: [jonathan\\_byrne@fd.org](mailto:jonathan_byrne@fd.org)

s/Rhett H. Johnson  
Rhett H. Johnson  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
300 Virginia Street, East, Room 3400  
Charleston, West Virginia 25301  
E-mail: [rhett\\_johnson@fd.org](mailto:rhett_johnson@fd.org)